

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DALLY PROPERTIES, LLC,

Plaintiff,

v.

TRUCK INSURANCE EXCHANGE, *et al.*,

Defendants.

No. C05-0254RSL

ORDER REMANDING ACTION AND  
GRANTING ATTORNEY'S FEES

This matter comes before the Court on "Defendant Travelers' Motion to Remand for Lack of Subject Matter Jurisdiction." All parties agree that this case was improperly removed to federal court by defendant Truck Insurance Exchange. Contrary to plaintiff's allegations and Truck's initial admissions, Truck is not a "foreign corporation" but rather an unincorporated association enjoying citizenship in every state in which it has a subscriber, including Washington. Thus, there was no diversity of citizenship at the time of removal and the Court lacks subject matter jurisdiction over this matter.

The question is what to do now. The Court and the parties have spent a significant amount of time and resources on this case, resulting in a number of dispositive rulings interpreting the coverage provisions of the insurance contracts and evaluating the viability of plaintiff's claims. See Dkt. # 148-150, 152, 153, and 156. Upon remand for lack of subject matter jurisdiction these rulings will be unenforceable and a legal nullity. See Toumajian v.

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1 Frailey, 135 F.3d 648, 652-53 (9th Cir. 1998) (“[T]he necessary and constitutional predicate for  
2 any decision is a determination that the court has jurisdiction – that is the power – to adjudicate  
3 the dispute. . . . If that power is missing, however, the court is not in a position to act and its  
4 decisions cannot generally be enforced.”). Plaintiff and defendant Truck urge the Court to  
5 remand the entire case to state court in the interests of efficiency, consistency, and judicial  
6 economy. Defendant Travelers argues that it would be more efficient to remand only those  
7 claims against the non-diverse defendant, Truck, thereby leaving intact the rulings involving  
8 Travelers and co-defendant Lexington Insurance Company.

9           The Supreme Court has been willing to affirm a federal jury verdict where, after  
10 failing to remand an improperly removed case, the district court approved a settlement involving  
11 the non-diverse party such that the federal jurisdictional requirements were satisfied at the time  
12 judgment was entered. See Caterpillar, Inc. v. Lewis, 519 U.S. 61, 64 (1996). It is clear,  
13 however, that the district court’s failure to remand a case improperly removed constitutes error.  
14 Caterpillar, 519 at 64, 70, 73. The Court sees no compelling reason to engage in knowing error  
15 in the circumstances presented here. All parties recognize that a remand of at least part of this  
16 case is necessary in any event and splitting the case as Travelers suggests raises the possibility of  
17 inconsistent contractual interpretations, two separate yet duplicative trials, and/or irreconcilable  
18 verdicts. The fact that the parties will have to relitigate issues already briefed and decided in  
19 this jurisdiction is regrettable, but some duplication is unavoidable insofar as plaintiff’s claims  
20 against Truck must be remanded to state court. If, as all parties have suggested in their  
21 memoranda, concerns regarding efficiency and economy are paramount, the parties have it in  
22 their power to avoid the costs and delays that will necessarily arise from a remand by agreeing to  
23 be bound by this Court’s decisions after returning to state court. While the Court strongly  
24 advises the parties to enter into such an agreement, it is without jurisdiction to order such a  
25 compromise as requested by defendant Truck.

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2 For all of the foregoing reasons, the above-captioned matter is hereby remanded to  
3 King County Superior Court. Because removal of this case was wrong as a matter of fact and  
4 law, the Court finds that Truck lacked an objectively reasonable basis for the removal. Martin v.  
5 Franklin Capital Corp., \_\_\_ U.S. \_\_\_, 126 S. Ct. 704, 711 (2005). No showing of bad faith is  
6 required and Truck's subjective belief that it was a citizen of California does not alter the fact  
7 that removal was not warranted by existing law or actual facts. Balcorta v. Twentieth Century-  
8 Fox Film Corp., 208 F.3d 1102, 1106 n.6 (9th Cir. 2000). Pursuant to 28 U.S.C. § 1447(c),  
9 defendant Traveler's request for the costs and expenses, including attorney's fees, incurred in  
10 making its motion for remand is GRANTED. Defendant Truck is therefore ordered to pay  
11 \$4,572.00 to defendant Travelers within twenty days from the date of this Order.

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13 DATED this 25th day of July, 2006.

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16 Robert S. Lasnik  
17 United States District Judge  
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